

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 95-1201-C - ORDER NO. 96-104 ✓  
MARCH 5, 1996

IN RE: Bobby Watts,	)	ORDER
Complainant,	)	ON
	)	HEARING
vs.	)	
	)	
BellSouth Telecommunications, Inc.,	)	
	)	
Respondent.	)	
	)	

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This matter comes before the Public Service Commission of South Carolina (the Commission) on the complaint of Bobby Watts (Mr. Watts) against BellSouth Telecommunications, Inc. (BellSouth or the Company). Mr. Watts alleges that BellSouth received a payment on his son's account, and misapplied the funds to his account, terminated service on his son's account, and then refused to reconnect service to his son.

A hearing was held on this matter on January 25, 1996 at 2:30 p.m. in the offices of the Commission, with the Honorable Rudolph Mitchell, Chairman, presiding. All Commissioners were present. The Complainant, Bobby Watts, appeared pro se, and presented his own testimony, in addition to that of his wife, Shirley Watts, his son, Greg Watts, Gary Walsh and Jim McDaniel of the Commission Staff, and Laurena Beck and Judy Nell Chambers of BellSouth.

BellSouth was represented by Patrick W. Turner, Esquire and William F. Austin, Esquire. BellSouth presented the testimony of Barry Roberson, Brenda Taylor and Ruby Butler. The Commission Staff was represented by F. David Butler, General Counsel.

Mr. Watts presented testimony about the complaint as alleged above, and about his dealings with various members of the Commission Staff, and with BellSouth representatives. His major point was that BellSouth made a mistake, and then refused to rectify it. Watts requested relief in the amount of \$2500 damages and an apology, or \$7500 and no apology.

The testimony of BellSouth may be summarized as stating that the records appear that no bill stub was sent in with Greg Watts' payment, and that the amount on his check was then applied to the account indicated by the phone number on the front of the check, which was Mr. Bobby Watts' number. The Company then testified that it attempted to cooperate with Mr. Watts to resolve his complaint, but to no avail. The matter now comes before us for adjudication. First, however, we must rule on three (3) objections interposed by Mr. Watts at various points in the hearing.

First, Watts objected to the testimony of Barry Roberson. Roberson had stated that the code numbers on the back of the check in question indicated that the payment arrived in "white mail," that is, mail that was not accompanied by a bill stub. Watt's objection was that Roberson could not testify to his son's payment actually arriving in "white mail," since he did not actually open

the envelope. We have re-examined the pre-filed testimony of Barry Roberson as given at the hearing, and found that Roberson testified from records of regularly conducted activity. The South Carolina Rules of Evidence, Rule 803(6) states that a memorandum, report, record, or data compilation, in any form, of acts, events, conditions or diagnoses made at or near the time of an event by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation is admissible if shown by the testimony of the custodian the of the records of a qualified witness.

This specific provision is contained in the South Carolina Rules of Evidence as an exception to the hearsay rule. We believe that Roberson's testimony that the record showed that Watts' son's check arrived in "white mail" is admissible under this exception to the hearsay rule. As we stated at the hearing, we believe that this testimony is admissible, although it does go to the weight of the testimony to be examined by this Commission. This objection must be overruled.

Second, Watts states a similar objection to the testimony of Brenda Taylor, stating that Ms. Taylor should only be able to testify as to what she knows first hand. Again we have examined the testimony of Ms. Taylor, and found that the same hearsay exception as listed above applies. In other words, Ms. Taylor quoted from various business records and memoranda kept by the

Company in the regular course of its business when she was not able to testify from her personal knowledge. We think that this exception to the hearsay rule applies equally in this instance. This objection must therefore be overruled, since Ms. Taylor's testimony is admissible.

Third, Watts objects to the exhibits sponsored by Ms. Taylor in this case stating that the exhibits are incomplete, and that they do not contain a complete record of all calls from the Bobby Watts account. We note that Mr. Watts, in making this objection presented no evidence to support this allegation. We therefore find the exhibit which was marked as Hearing Exhibit No. 2 to be credible, and affirm its admission.

With regard to the merits of the case, the Commission listened to the evidence with interest, and comes to the following conclusions.

First, we believe that Mr. Watts had the burden of proof in this matter in proving the allegations of his complaint. We do not think that he met this burden of proof. We do not agree that he showed what he alleged in his original complaint.

Second, we note that the complaint was not properly filed with this Commission, in that it was filed under the name of Mr. Bobby Watts. It was clear at the hearing that Mr. Greg Watts had the actual complaint, in that Mr. Greg Watts' payment was applied to Mr. Bobby Watts' account, and Mr. Greg Watts' service was discontinued. Therefore, the complaint was improperly filed and should have been filed under Mr. Greg Watts' name.

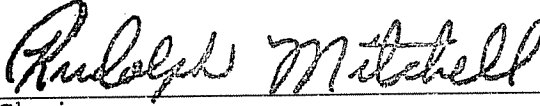
Next, we note that the evidence shows that even if the \$150 at issue in the case had been properly credited to Mr. Greg Watts' account, he would still have been subject to be disconnected, due to a remaining outstanding indebtedness of \$69.11. This matter was never explained by either Mr. Bobby Watts, Mr. Greg Watts, or any witness for the Complainant.

Lastly, we note that Mr. Bobby Watts has not requested any relief that this Commission can actually grant. The South Carolina Code of Laws does not allow this Commission to award damages under the circumstances of the case at bar. Mr. Watts had requested in the alternative either \$2500 and a apology, or \$7500. This Commission has no statutory authority to award such damages.

Having reviewed the evidence and the law in this case, we therefore decline to award any relief in this matter, and hereby Order that the complaint be dismissed.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)